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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

v.

SHELL OIL COMPANY, et al.,

Defendants.

AND RELATED CLAIMS

CASE No. CV 91-0589 RJK(Ex)

FIRST AMENDED CONSENT DECREE
AMONG GOVERNMENT PLAINTIFFS
AND DEFENDANT MCAULEY LCX
CORPORATION, INCLUDING
ENVIRONMENTAL RESTRICTIONS
ON USE OF REAL PROPERTY
IDENTIFIED IN EXHIBITS D AND
E; AND [PROPOSED] ORDER

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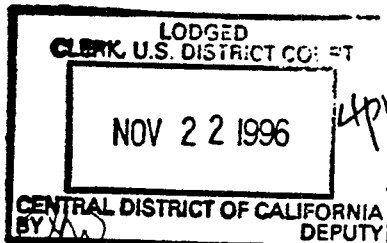
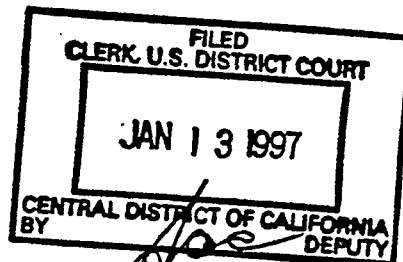
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1 I. BACKGROUND

2 A. On February 1, 1991, the United States of America, on
3 behalf of the Administrator of the United States Environmental
4 Protection Agency, and the State of California, ex rel.
5 California Department of Health Services, Hazardous Substance
6 Account, and Hazardous Substance Cleanup Fund, filed a complaint
7 in the Pending Action against, among others, McAuley LCX
8 Corporation ("McAuley"), pursuant to Sections 107 and 113(g)(2)
9 of the Comprehensive Environmental Response, Compensation,
10 Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613(g)(2), as
11 amended ("CERCLA").

12 B. The complaint in the Pending Action seeks, among other
13 relief, reimbursement of response costs incurred, and a
14 declaration of liability for response costs to be incurred, by
15 the United States and State for response actions in connection
16 with the release or threatened release of hazardous substances at
17 the McColl Superfund Site in Fullerton, Orange County, California
18 ("the Site").

19 C. The release or threatened release of hazardous
20 substances at or from the Site has caused the United States and
21 the State to incur response costs as defined by Section 101(25)
22 of CERCLA, 42 U.S.C. § 9601(25).

23 D. McAuley filed certain counterclaims in the Pending
24 Action against the United States of America, certain agencies
25 thereof, and the State of California, seeking, among other
26 relief, damages for alleged nuisance, trespass and inverse
27 condemnation. The inverse condemnation counterclaims were
28

1 dismissed pursuant to a stipulation of the parties on November 8,
2 1991.

3 E. On December 1, 1995, a Consent Decree was lodged with
4 the Court which was proposed to resolve the Governments'
5 outstanding claims against McAuley, and McAuley's outstanding
6 claims against the Governments.

7 F. The Parties have stipulated to request that this Consent
8 Decree be withdrawn due to circumstances that have changed since
9 the December 1, 1995 lodging. These changed circumstances
10 include EPA's issuance of a Record of Decision to address
11 groundwater contamination at the Site, the potential purchase of
12 additional Site property by McAuley, and the decision to clarify
13 the scope of contribution protection afforded to McAuley by this
14 settlement. Despite these changes, this First Amended Consent
15 Decree is the same in all material respects as the Consent Decree
16 lodged on December 1, 1995.

17 G. The Parties acknowledge that McAuley's execution of this
18 First Amended Consent Decree, in and of itself, does not
19 constitute an admission of liability for the matters alleged in
20 the complaint in the Pending Action; provided, however, that this
21 acknowledgement shall have no effect on the judgment rendered in
22 the Pending Action on September 28, 1993, or on the findings
23 contained in that judgment, including but not limited to the
24 finding of liability against McAuley.

25 H. The United States, the State and McAuley agree and this
26 Court, by entering this First Amended Consent Decree, finds that
27 settlement of this matter will avoid further prolonged and
28

1 complicated litigation and that this First Amended Consent Decree
2 is fair, reasonable, and in the public interest.

3 THEREFORE, with the consent of the Parties to this Decree,
4 it is ORDERED, ADJUDGED, AND DECREED:

5
6 **II. JURISDICTION**

7 1. This Court has jurisdiction over the subject matter of
8 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
9 §§ 9607 and 9613(b). This Court also has personal jurisdiction
10 over McAuley. Solely for the purposes of this First Amended
11 Consent Decree (hereinafter "Consent Decree"), McAuley waives all
12 objections and defenses that it may have to jurisdiction of the
13 Court or to venue in this District and shall not challenge the
14 entry of this Consent Decree or this Court's jurisdiction to
15 enter and enforce this Consent Decree.

16
17 **III. PARTIES BOUND**

18 2.a. This Consent Decree is binding upon the United States
19 and the State, and upon McAuley and its successors and assigns.
20 Any change in ownership or corporate or other legal status,
21 including but not limited to any transfer of assets or real or
22 personal property, shall in no way alter the responsibilities of
23 McAuley under this Consent Decree.

24 b. Notwithstanding any other provision of this Consent
25 Decree, all of the rights, benefits and obligations conferred
26 upon McAuley under this Consent Decree may be assigned or
27 transferred to any person only with the prior written consent of
28

1 EPA and the State, in their sole discretion.

2
3 **IV. DEFINITIONS**

4 3. Unless otherwise expressly provided herein, terms used
5 in this Consent Decree which are defined in CERCLA or in
6 regulations promulgated under CERCLA shall have the meaning
7 assigned to them in CERCLA or in such regulations. Whenever
8 terms listed below are used in this Consent Decree the following
9 definitions shall apply:

10 a. "CERCLA" shall mean the Comprehensive Environmental
11 Response, Compensation, and Liability Act of 1980, as amended, 42
12 U.S.C. §§ 9601 et seq.

13 b. "Consent Decree" shall mean this Decree.

14 c. "Day" shall mean a calendar day. In computing any
15 period of time under this Consent Decree, when the last day would
16 fall on a Saturday, Sunday, or federal Holiday, the period shall
17 run until the close of business of the next working day.

18 d. "DTSC" shall mean the California Department of Toxic
19 Substances Control" and any successor departments or agencies of
20 the State of California.

21 e. "EPA" shall mean the United States Environmental
22 Protection Agency and any successor departments or agencies of
23 the United States.

24 f. "Interest," in accordance with 42 U.S.C. § 9607(a),
25 shall mean interest at the rate specified for interest on
26 investments of the Hazardous Substance Superfund established
27 under subchapter A of chapter 98 of Title 26 of the U.S. Code,

1 compounded daily.

2 g. "McAuley" shall mean Defendant McAuley LCX Corporation.

3 h. "Paragraph" shall mean a portion of this Consent Decree
4 identified by an Arabic numeral.

5 i. "Parties" shall mean the United States, the State and
6 McAuley.

7 j. "Past State Response Costs" shall mean all costs,
8 including but not limited to direct and indirect costs, that the
9 State has incurred in connection with the Site and paid as
10 follows: (1) California Department of Health Services costs
11 incurred and paid through September 30, 1990; and (2) California
12 Department of Justice costs incurred and paid through June 30,
13 1991, plus accrued interest on all costs described in this
14 paragraph through July 31, 1993.

15 k. "Past United States Response Costs" shall mean all
16 costs, including but not limited to direct and indirect costs,
17 that the United States has incurred in connection with the Site
18 and paid through June 30, 1990, plus costs incurred and paid to
19 contractors through September 30, 1990, in circumstances where
20 these latter costs were paid in part with federal funds and in
21 part with state funds, plus accrued interest on all costs
22 described in this paragraph through July 31, 1993.

23 l. "Pending Action" shall mean United States of America, et
24 al. v. Shell Oil Co., et al., United States District Court,
25 Central District of California, No. Cv-91-0589 RJK(Ex).

26 m. "RCRA" shall mean the Resource Conservation and Recovery
27 Act, as amended, 42 U.S.C. §§ 6901 et seq.

1 n. "Section" shall mean a portion of this Consent Decree
2 identified by a Roman numeral.

3 o. "Site" shall mean the McColl Superfund site, located in
4 the northwest section of the City of Fullerton, Orange County,
5 California, encompassing approximately twenty-two (22) acres and
6 the areal extent of contamination therefrom.

7 p. "State" shall mean the State of California, ex rel.,
8 California Department of Health Services and its successor for
9 purposes of this case, the California Department of Toxic
10 Substances Control, the Hazardous Substance Account, and
11 Hazardous Substance Cleanup Fund.

12 q. "United States" shall mean the United States of America,
13 acting on behalf of EPA and the United States Department of
14 Justice ("DOJ") in its capacity on behalf of EPA.

15
16 V. REIMBURSEMENT OF RESPONSE COSTS

17 4.a. Payment of Past Response Costs to the EPA. Within one
18 (1) year of the Effective Date of this Consent Decree, McAuley
19 shall pay to EPA \$184,000, plus Interest from the Effective Date,
20 for Past United States Response Costs, by Electronic Funds
21 Transfer ("EFT") to the U.S. Department of Justice lockbox bank,
22 referencing the McColl Superfund Site CERCLA Number 9-04; United
23 States of America, et al. v. Shell Oil Co., et al. CV 91-0589
24 RJK; DOJ number 90-11-2-3A; and U.S.A.O. file number 91-00-586.
25 Payment shall be made in accordance with instructions provided to
26 McAuley upon execution of the Consent Decree. Any EFTs received
27 at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be

1 credited on the next business day. At the time of payment,
2 McAuley shall simultaneously send written notice of payment and a
3 copy of any transmittal documentation to EPA and DOJ in
4 accordance with Section XIII (Notices and Submissions).

5 b. Payment of Past Response Costs to the State. Within
6 thirty (30) days of the Effective Date of this Consent Decree,
7 McAuley shall pay to the State \$66,000 for Past State Response
8 Costs, in the form of one certified check or cashier's check.
9 The check shall be made payable to the California Department of
10 Toxic Substances Control and shall reference United States, State
11 of Calif. v. Shell Oil Co., et al., U.S. Dist. Ct. No. CV-91-
12 0589-RJK; DTSC Project No. 400093; and Cal. DOJ Docket No. 49006-
13 430-SD89CV0267. McAuley shall forward the check to:

14 Department of Toxics Substances Control
15 Accounting/Cashiers
16 400 P Street, 4th Floor
 P.O. Box 806
 Sacramento, CA 95812-0806

17 5.a. Declarations Regarding Financial Information. On June
18 7, 1995, Charles S. McAuley, as President of McAuley, executed a
19 declaration attesting to the veracity and completeness of the
20 information provided by McAuley to the United States and the
21 State regarding McAuley's financial condition. This declaration
22 shall be attached to this Decree as Exhibit A and made a part of
23 the Decree. Simultaneously with McAuley's execution of this
24 Decree, Charles S. McAuley, as President of McAuley, shall
25 execute a declaration attesting to the fact that the financial
26 condition of McAuley LCX Corporation remains in all material
27 respects the same as it was when the declaration attached to this

1 Decree as Exhibit A was executed. This second declaration shall
2 be attached to this Decree as Exhibit B and made a part of the
3 Decree.

4 b. Declaration Regarding Funding For Potential Acquisition
5 and Development of Ramparts Property. Simultaneously with
6 McAuley's execution of this Decree, Charles S. McAuley, as
7 President of McAuley, shall execute a declaration attesting to
8 the source of funding for the potential acquisition and
9 development of that portion of the McColl Superfund Site
10 described in Section X. of the Consent Decree as "Property II"
11 (also known as the "Ramparts Property"), more fully described in
12 Exhibit E to this Consent Decree. This declaration shall be
13 attached to this Decree as Exhibit C and made a part of the
14 Decree.

15 VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

16 6. Interest on Late Payments. In the event that any
17 payments required by Section V or Section VI, Paragraph 7, are
18 not made when due, Interest shall continue to accrue on the
19 unpaid balance through the date of payment.

20 7. Stipulated Penalty.

21 a. If any amounts due EPA or the State under this Consent
22 Decree are not paid by the required date, McAuley shall pay as a
23 stipulated penalty, in addition to the Interest required by
24 Paragraph 6, \$1,000 per day for each payment that is late.

25 b. If McAuley does not comply with any other requirements
26 of this Consent Decree, McAuley shall pay as a stipulated penalty
27 to EPA and the State, with 50% paid to each agency, \$500 per
28

1 violation per day of such noncompliance.

2 c. If the United States and/or State seek to collect
3 stipulated penalties and/or initiate or pursue any claim or cause
4 of action against McAuley for McAuley's failure to perform its
5 obligations under Section V, Paragraphs 4(a) or 4(b), or Section
6 X of this Decree, the United States and/or State shall provide
7 McAuley with notice of the nonperformance or noncompliance and
8 allow McAuley an opportunity to cure the nonperformance or
9 noncompliance within fifteen (15) days, or such other period as
10 the Parties may agree upon, from McAuley's receipt of notice.

11 d. Stipulated penalties are due and payable within twenty
12 (20) days of McAuley's receipt from EPA or the State of a written
13 demand and notice for payment of the penalties in accordance with
14 Section XIII (Notices and Submissions). All payments to EPA
15 under this Paragraph 7 shall be paid in the manner described for
16 the payment of response costs in Section V, paragraph 4(a) above.
17 At the time of payment, McAuley shall simultaneously send written
18 notice of payment and a copy of any transmittal documentation to
19 EPA and DOJ in accordance with Section XIII (Notices and
20 Submissions). All payments to the State under this Paragraph 7
21 shall be paid by certified or cashier's check made payable to the
22 California Department of Toxics Substances Control and shall
23 reference United States, State of Calif. v. Shell Oil Co., et
24 al., U.S. Dist. Ct. No. CV-91-0589-RJK; DTSC Project No. 400093;
25 Cal. DOJ Docket No. 49006-430-SD89CV0267. All such payments
26 shall be mailed to the address provided above in Section V,
27 paragraph 4(b). All penalties shall begin to accrue on the first

1 day of noncompliance, except that penalties for noncompliance
2 subject to the cure provision of paragraph 7(c) above shall begin
3 to accrue on the day after the expiration of the cure period
4 described in paragraph 7(c). All penalties shall continue to
5 accrue through the final day of the correction of the
6 noncompliance or completion of the activity. Penalties shall
7 accrue as provided above regardless of whether EPA or the State
8 has made a demand for payment, but need only be paid upon demand.
9 Nothing herein shall prevent the simultaneous accrual of separate
10 penalties for separate violations of this Consent Decree.

11 e. The United States and/or State, in their sole and
12 unreviewable discretion, may reduce or forego any stipulated
13 penalties and interest that might accrue under this Decree.

14 8. If the United States or the State must bring an action
15 to enforce this Consent Decree, McAuley shall reimburse the
16 United States and the State for all costs of such action,
17 including but not limited to attorneys' fees.

18 9. Payments made under Paragraphs 6-8 shall be in addition
19 to any other remedies or sanctions available to the United States
20 and the State by virtue of McAuley's failure to comply with the
21 requirements of this Consent Decree.

22 VII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS
23 BY THE UNITED STATES AND THE STATE

24 10. Covenant. In consideration of the actions that will be
25 performed and the payments that will be made by McAuley under the
26 terms of the Consent Decree, and except as specifically provided
27

1 in Paragraphs 11 and 12 of this Section, the United States and
2 State covenant not to sue or to take administrative action
3 against McAuley pursuant to CERCLA Sections 106 or 107 or state
4 law for the performance of or the payment for any response
5 actions relating to the Site. Following entry of this Consent
6 Decree by the Court, EPA will amend its Administrative Order No.
7 93-21 to delete McAuley as a Respondent. These covenants not to
8 sue shall take effect upon the receipt by EPA and the State of
9 the payments required by Paragraph 4 of Section V (Reimbursement
10 of Response Costs); provided, however, that during the one (1)
11 year period for payment by McAuley as provided in paragraph 4(a)
12 above, EPA agrees not to initiate or pursue any claim or cause or
13 action against McAuley related to the Site, provided McAuley is
14 otherwise in full compliance with the terms of the Decree. These
15 covenants not to sue are conditioned upon the complete and
16 satisfactory performance by McAuley of its obligations under this
17 Consent Decree. These covenants not to sue extend only to
18 McAuley and do not extend to any other person.

19 11. a. Reservation Regarding Financial Information.

20 Notwithstanding any other provision of this Consent Decree, the
21 United States and State reserve, and this Consent Decree is
22 without prejudice to, the right to institute proceedings in this
23 action or in a new action, or to issue an administrative order,
24 seeking to compel McAuley (1) to perform further response actions
25 relating to the Site or (2) to reimburse the United States and
26 State for additional costs of response, if the information
27 provided by McAuley to the United States and State regarding

1 McAuley's financial condition, or regarding the funding and
2 development of Property II, as set forth in Exhibits A, B and C.
3 to this Decree, is untrue or incomplete in any material respect.

4 b. General Reservations. The covenants not to sue set
5 forth above do not pertain to any matters other than those
6 expressly specified in Paragraph 10. The United States and the
7 State reserve, and this Consent Decree is without prejudice to,
8 all rights against McAuley with respect to all other matters,
9 including but not limited to, the following:

10 (1) claims based on a failure by McAuley to meet a
11 requirement of this Consent Decree;

12 (2) liability arising from the past, present, or
13 future disposal, release, or threat of release of any
14 hazardous substance, pollutant or contaminant beyond the
15 Site;

16 (3) liability for costs that have been or may be
17 incurred by any federal or state agencies or entities that
18 are not within the definitions of "United States" or
19 "State";

20 (4) liability for damages for injury to, destruction
21 of, or loss of natural resources, and for the cost of any
22 natural resource damage assessments;

23 (5) liability for response costs that have been or may
24 be incurred by any federal or state agencies that are
25 trustees for natural resources and which have, or may in the
26 future, spend funds relating to the Site;

27 (6) criminal liability; and

1 (7) liability for past, present or future violations
2 of federal or state law other than liability resolved by
3 this Decree.

4 12. Notwithstanding any other provision of this Consent
5 Decree, the United States and the State retain all authority and
6 reserve all rights to take any and all response actions
7 authorized by law. Notwithstanding any other provision of this
8 Consent Decree, the United States and the State retain all
9 authority and reserve all rights to seek and impose institutional
10 controls as part of any response action required for the Site,
11 including, but not limited to, the Records of Decisions signed on
12 June 30, 1993, and on May 15, 1996. Nothing contained herein
13 shall in any way limit or restrict the response and enforcement
14 authority of the United States or State to initiate appropriate
15 action, either judicial or administrative, under applicable
16 provisions of federal and state law, against any other person or
17 entity not a party to this Decree.

18
19 VIII. COVENANT NOT TO SUE, AGREEMENT NOT TO INTERFERE WITH
20 RESPONSE ACTIONS AND RESERVATION OF RIGHTS BY
21 MCAULEY

22 13. a. Covenant Not to Sue . McAuley hereby covenants not
23 to sue and agrees not to assert any claims or causes of action
24 against the United States or the United States of America,
25 including all past and future agencies, departments and
26 instrumentalities of the United States of America, or the State
27 or the State of California, including all past and future

agencies, departments and instrumentalities of the State of California, or any agents or employees of the above-listed entities, with respect to the Site or this Consent Decree, including, but not limited to: (1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law; (2) any claim under CERCLA Sections 107 or 113; (3) any claims arising out of response activities at the Site, including but not limited to nuisance, trespass, takings claims or inverse condemnation. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). McAuley acknowledges that this covenant extends to all claims or causes of action of any kind whatsoever, known or unknown relating to the Site. McAuley further expressly waives all rights under section 1542 of the California Civil Code.

b. Agreement Not to Interfere With Response Actions.

McAuley shall take no action, including the extraction of groundwater, on property adjacent to the Site and owned by McAuley as of the date of entry of this Decree that interferes with the response actions taken at the Site, without prior approval from EPA. Approval from EPA shall be sought in accordance with the provisions of paragraph 25(b) of this Decree.

14. Reservation of Rights. a. McAuley reserves the right to enforce this Consent Decree. McAuley further reserves its

1 right to pursue its current cross-claims against the named oil
2 company defendants in the Pending Action, including a claim for
3 reimbursement of the amounts paid by McAuley under this Consent
4 Decree.

5 b. By entering into this Consent Decree, McAuley expressly
6 waives any right it might have to appeal the judgment rendered in
7 the Pending Action on September 28, 1993, or any of the findings
8 contained in that judgment, including but not limited to the
9 finding of liability against McAuley; provided, however, that if
10 the United States and/or State initiate or pursue any claim or
11 cause of action to recover additional response costs from McAuley
12 based on McAuley's failure to perform its obligations under this
13 Decree or otherwise to comply with the provisions of this Decree,
14 McAuley will be entitled to contest whether such response costs
15 were incurred in a manner not inconsistent with the National
16 Contingency Plan. The above waiver does not affect, and is
17 without prejudice to, the right of McAuley to defend against any
18 claim or cause of action brought by any party not a signatory to
19 this Decree.

20
21 **IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

22 15. Nothing in this Consent Decree shall be construed to
23 create any rights in, or grant any cause of action to, any person
24 not a party to this Consent Decree. The preceding sentence shall
25 not be construed to waive or nullify any rights that any person
26 not a signatory to this Consent Decree may have under applicable
27 law. Each of the Parties expressly reserves any and all rights
28

1 (including, but not limited to, any right to contribution),
2 defenses, claims, demands, and causes of action which each party
3 may have with respect to any matter, transaction, or occurrence
4 relating in any way to the Site against any person not a party
5 hereto, except as provided in paragraph 13 above.

6 16. With respect to claims for contribution against McAuley
7 for matters addressed in this Consent Decree, the Parties hereto
8 agree that McAuley is entitled to such protection from
9 contribution actions or claims as is provided by CERCLA Section
10 113(f)(2), 42 U.S.C. § 9613(f)(2). For purposes of this Consent
11 Decree only, "matters addressed" are the performance of or the
12 payment for any response actions, incurred or to be incurred by
13 the Government Plaintiffs or by any other responsible party,
14 relating to the Site. Such protection is conditioned upon
15 McAuley's compliance with the requirements of this Consent
16 Decree, and such protection shall not be afforded if the
17 information provided by McAuley to the United States and State
18 regarding McAuley's financial condition, or regarding the funding
19 and development of Property II, as set forth in Exhibits A, B and
20 C to this Decree, is untrue or incomplete in any material
21 respect.

22 17. McAuley agrees that, with respect to any suit or claim
23 for contribution not currently pending brought by it for matters
24 related to this Consent Decree, it will notify EPA and DOJ and
25 the State in writing no later than twenty (20) days prior to the
26 initiation of such suit or claim. McAuley also agrees that, with
27 respect to any suit or claim for contribution not currently
28

1 pending brought against it for matters related to this Consent
2 Decree, it will notify EPA and DOJ and the State in writing
3 within ten (10) days of service of the complaint on it. In
4 addition, McAuley shall notify EPA and DOJ and the State within
5 ten (10) days of service or receipt of any Motion for Summary
6 Judgment and within ten (10) days of receipt of any order from a
7 court setting a case for trial for matters related to this
8 Consent Decree.

9 18. In any subsequent administrative or judicial proceeding
10 initiated by the United States or the State for injunctive
11 relief, recovery of response costs, or other appropriate relief
12 relating to the Site, McAuley shall not assert, and may not
13 maintain, any defense or claim based upon the principles of
14 waiver, res judicata, collateral estoppel, issue preclusion,
15 claim-splitting, or other defenses based upon any contention that
16 the claims raised by the United States or the State in the
17 subsequent proceeding were or should have been brought in the
18 Pending Action; provided, however, that nothing in this Paragraph
19 affects the enforceability of the covenants not to sue set forth
20 in Section VII (Covenants Not to Sue by the United States and the
21 State).

22
23 X. ACCESS TO AND RESTRICTIONS ON THE SITE AND
NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

24 19. McAuley, with a mailing address of 8888 Los Coyotes
25 Drive, Buena Park, California 90621, is the record owner of
26 certain real property located in the City of Fullerton, Orange
27 County, California, which is referred to in this Section X as the

1 "Property". The legal description of the Property is set forth
2 on the first page of Exhibit D hereto and a map of the Property
3 is contained on the second page of Exhibit D hereto.

4 20. The Property, which consists of 14.689 acres, comprises
5 the western portion of the approximately 22-acre McColl Superfund
6 Site. The eastern portion of the Site which is comprised of the
7 approximately eight remaining acres of the Site is owned by the
8 Los Coyotes Estates, Ltd., a defunct investment company, as of
9 May 26, 1996. These eight acres are referred to in this Section
10 X as "Property II." The legal description of Property II is set
11 forth on Exhibit E hereto.

12 21. Pursuant to a Records of Decision issued by EPA on June
13 30, 1993, and May 15, 1996, under the authority of CERCLA,
14 certain response actions are being performed at the Site,
15 including the installation of a multi-layer cover over all or a
16 portion of the Site.

17 22. In the event that McAuley becomes the record owner of
18 Property II, McAuley hereby agrees to assume all rights,
19 obligations and restrictions for Property II, it has assumed for
20 the Property under this Consent Decree. Accordingly, commencing
21 immediately upon becoming the record owner for Property II, all
22 references in this Consent Decree to the "Property" shall be
23 deemed to be references to both the Property and Property II.

24 23. Commencing on the date McAuley executes the Consent
25 Decree, and continuing while any response actions are being
26 conducted at the Site, including but not limited to operation and
27 maintenance of any remedial action, McAuley shall provide EPA and
28

1 DTSC and their representatives, and designees access at all times
2 to the Property for the purposes of conducting any response
3 actions or related activities, including but not limited to:

- 4 a) Monitoring response actions;
- 5 b) Verifying any data or information submitted to EPA
6 and DTSC;
- 7 c) Conducting investigations relating to contamination
8 at or near the Site;
- 9 d) Obtaining samples;
- 10 e) Assessing the need for, planning, or implementing
11 additional response actions at or near the Site;
- 12 f) Inspecting and copying records, operating logs,
13 contracts, or other documents maintained or generated by McAuley
14 or its agents; and
- 15 g) Assessing McAuley's compliance with the Consent
16 Decree.

17 24. McAuley acknowledges that, notwithstanding any
18 provision of this Consent Decree, EPA and DTSC retain all of
19 their access authorities and rights, including enforcement
20 authorities related thereto, under CERCLA, the Resource
21 Conservation Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.,
22 and any other applicable statute or regulations.

23 25. As contemplated by the selection of institutional
24 controls in the June 30, 1993, and May 15, 1996 Records of
25 Decision, and as a condition to this Consent Decree, McAuley
26 covenants with EPA and DTSC that there be and hereby are created
27 the following restrictions on the use and enjoyment of the
28

1 Property:

2 a. Restrictions. No building material, objects,
3 construction, structure, improvements, building, fences or
4 barriers, of any kind whether intended as temporary or permanent,
5 shall be placed, stored or erected upon any portion of the
6 Property without prior approval from EPA; and no natural or
7 manmade materials of any kind, whether intended as temporary or
8 permanent, shall be dumped, filled, stored or placed upon any
9 portion of the Property without prior approval from EPA; and no
10 filling, excavating, digging, dredging, mining, quarrying,
11 drilling, removal or disturbance of topsoil, sand, gravel, rock,
12 minerals or other materials, or any topographical changes or any
13 building of roads, whether intended as temporary or permanent,
14 shall occur upon any portion of the Property without prior
15 approval from EPA; and no other action shall be taken at, on or
16 to the Property that disturbs or in any way affects the condition
17 of the Property or interferes with the response actions taken at
18 the Site, without prior approval from EPA. McAuley shall seek
19 said prior approval from EPA by the method set forth below in
20 Paragraph 25(b) of the Consent Decree. These restrictions are
21 not intended to preclude any specific future use of the Property,
22 including but not limited to use as a golf course, provided that
23 none of the activities set forth in this paragraph is undertaken
24 without prior approval from EPA.

25 b. Method for Seeking Approval. The restrictions set forth
26 in paragraph 25(a) of this Decree require McAuley to seek
27 approval from EPA prior to undertaking certain activities in

1 connection with the Site. This paragraph 25(b) sets forth the
2 exclusive process for McAuley to seek and for EPA to grant the
3 approval required by paragraph 25(a). To seek the required
4 approval, McAuley shall provide to EPA as specified in Section
5 XIII (Notices and Submissions) of this Decree, a written request
6 describing the activity McAuley wants to undertake. McAuley
7 shall provide a copy of the request to the State as provided in
8 Section XIII. EPA will attempt to respond to McAuley within
9 fifteen (15) days of receiving the request. EPA's approval of
10 the request must be in writing. Oral approval by EPA, or a
11 failure by EPA to respond within fifteen (15) days, shall not
12 constitute approval of the activity as required by the
13 restrictions in paragraph 25(a). If EPA fails to respond within
14 the fifteen (15) days, or if EPA disapproves of the request,
15 McAuley may elevate its request to the Director, Hazardous Waste
16 Management Division, EPA Region IX. To elevate the request,
17 McAuley must submit its request in writing and any supporting
18 documents by certified or overnight mail to the Director, with
19 copies to EPA as specified in Section XIII of this Decree. The
20 Director will attempt to respond in writing to the request within
21 fifteen (15) days of receipt of the request. If the Director
22 does not respond within fifteen (15) days, McAuley, to pursue its
23 request, must send a second request by certified or overnight
24 mail to the Director, with copies to EPA as specified in Section
25 XIII of this Decree. The Director will attempt to respond within
26 fifteen (15) days of receipt of this second request. Failure by
27 the Director to respond in writing within this second fifteen
28

1 (15) day period shall constitute EPA approval of the request.
2 The Director will not make an arbitrary or capricious decision in
3 responding to a request by McAuley to undertake an activity.
4 McAuley acknowledges that the decision by the Director is final
5 and is not subject to review by any court or any other judicial
6 or administrative body.

7 26. Within fifteen (15) days after the Effective Date of
8 this Consent Decree, McAuley shall record a certified copy of
9 this Consent Decree, with the Office of the Recorder of Orange
10 County, State of California. Thereafter, each deed, title or
11 other instrument of conveyance for the Property or any portion
12 thereof shall contain a notice stating that the Property or
13 portion thereof is subject to this Consent Decree and shall
14 reference the recorded location of the Consent Decree and all
15 restrictions applicable to the Property under this Consent
16 Decree. In the event McAuley becomes the record owner of
17 Property II, as defined above in paragraph 20 of this Consent
18 Decree, within fifteen (15) days of such event, McAuley shall
19 record a certified copy of this Consent Decree in relation to
20 Property II.

21 27. The obligations of McAuley with respect to the
22 provision of access under Paragraph 23 of this Consent Decree and
23 the implementation of restrictions under Paragraph 25 of this
24 Decree shall be binding upon McAuley and any and all persons who
25 subsequently acquire any interest in the Property or any portion
26 thereof (hereinafter "Successors-in-Title"). Each of these
27 obligations and restrictions relates to the use of the Property

1 and each obligation and restriction is reasonably necessary to
2 protect present or future human health or safety or the
3 environment as a result of the presence on the Property of
4 hazardous substances. Within fifteen (15) days after the
5 Effective Date of this Consent Decree, McAuley shall record, at
6 the Office of the Recorder of Orange County, State of California,
7 a notice of obligation to provide access under this Decree and
8 related covenants. Each subsequent deed to the Property or any
9 portion thereof shall reference the recorded location of such
10 notice and covenants applicable to the Property.

11 28. McAuley and any Successor-in-Title shall, at least
12 thirty (30) days prior to the conveyance of any such interest,
13 give written notice of this Consent Decree to the grantee and
14 written notice to EPA and the State of the proposed conveyance,
15 including the name and address of the grantee, and the date on
16 which notice of the Decree was given to the grantee. In the
17 event of any such conveyance, McAuley's obligations under this
18 Consent Decree shall continue to be met by McAuley. In no event
19 shall the conveyance of an interest in property that includes, or
20 is a portion of, the Site release or otherwise affect the
21 liability of McAuley to comply with the Consent Decree.

22 23 XI. ACCESS TO INFORMATION

24 29. McAuley shall provide to EPA and the State, upon
25 request, copies of all documents and information within its
26 possession or control or that of its contractors or agents
27 relating to activities at the Site or to the implementation of
28

1 this Consent Decree, including, but not limited to, sampling,
2 analysis, chain of custody records, manifests, trucking logs,
3 receipts, reports, sample traffic routing, correspondence, or
4 other documents or information related to the Site or response
5 actions. McAuley shall also make available to EPA and the State,
6 for purposes of investigation, information gathering, or
7 testimony, its employees, agents, or representatives with
8 knowledge of relevant facts concerning the Site or response
9 actions.

10 11 **XII. RETENTION OF RECORDS**

12 30. Until five (5) years after the Effective Date of this
13 Decree, McAuley shall preserve and retain all records and
14 documents now in its possession or control or which come into its
15 possession or control that relate in any manner to the Site or
16 response actions or liability of any person for response actions
17 conducted and to be conducted at the Site, regardless of any
18 corporate retention policy to the contrary. McAuley shall also
19 instruct their contractors and agents to preserve for five (5)
20 years after the entry of this Decree all documents, records, and
21 information of whatever kind, nature or description relating to
22 the Site or response actions.

23 31. At the conclusion of this document retention period,
24 McAuley shall notify the United States and the State at least
25 sixty (60) days prior to the destruction of any such records or
26 documents, and, upon request by the United States or the State,
27 McAuley shall deliver any such records or documents to EPA or the
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1 State. McAuley may assert that certain documents, records and
2 other information are privileged under the attorney-client
3 privilege or any other privilege recognized by federal law. If
4 McAuley asserts such a privilege, it shall provide the United
5 States and the State with the following: (1) the title of the
6 document, record, or information; (2) the date of the document,
7 record, or information; (3) the name and title of the author of
8 the document, record, or information; (4) the name and title of
9 each addressee and recipient; (5) a description of the subject of
10 the document, record, or information: and (6) the privilege
11 asserted by McAuley.
12

13 XIII. NOTICES AND SUBMISSIONS

14 32. Whenever, under the terms of this Consent Decree,
15 notice is required to be given or a document is required to be
16 sent by one party to another, it shall be directed to the
17 individuals or their successors at the addresses specified below,
18 unless those individuals or their successors give notice of a
19 change to the other Parties in writing. Written notice as
20 specified herein shall constitute complete satisfaction of any
21 written notice requirement of the Consent Decree with respect to
22 EPA, DOJ and the State, and McAuley, respectively.

23 As to the United States or DOJ:

24 Joel Gross
25 Chief, Environmental Enforcement Section
26 Environment and Natural Resources Division
27 U.S. Department of Justice
28 P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 Re: United States v. Shell Oil Co. 91-0589 RJK
2 DOJ Number 90-11-2-3A

3 As to EPA:

4 Patti Collins
5 Remedial Project Manager
6 EPA Region IX
7 75 Hawthorne Street, H-6
8 San Francisco, California 94105

9 and

10 Jo Ann Asami
11 Office of Regional Counsel
12 EPA Region IX
13 75 Hawthorne Street, RC-3
14 San Francisco, California 94105

15 As to the State:

16 Jacalyn Spizman, Ph.D., Project Manager
17 Site Mitigation Program
18 Department of Toxic Substances Control
19 245 West Broadway, 3rd Floor
20 Long Beach, CA 90802

21 and

22 Steve Koyasako, Assistant Chief Counsel
23 Office of Legal Counsel
24 Department of Toxic Substances Control
25 400 P Street, 4th Floor
26 P.O. Box 806
27 Sacramento, CA 95812-0806

28 and

29 Timothy R. Patterson
30 Office of the Attorney General
31 110 West A Street, Suite 1100
32 P.O. Box 85266
33 San Diego, California 92186-5266

34 As to McAuley:

35 Charles S. McAuley
36 President
37 MCAULEY LCX CORPORATION
38 8888 Los Coyotes Drive
39 Buena Park, California 90621

1 and

2 Craig Moyer, Esq.
3 DEMETRIOU, DEL GUERCIO, SPRINGER & MOYER, LLP
4 801 South Grand Avenue, 10th Floor
5 Los Angeles, California 90017-4613

6 **XIV. RETENTION OF JURISDICTION**

7 33. This Court shall retain jurisdiction of this matter
8 for the purpose of enforcing the terms of this Consent Decree.

9 **XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

10 34. This Consent Decree shall be lodged with the Court for
11 a period of thirty (30) days for public notice and comment. The
12 United States reserves the right to withdraw or withhold its
13 consent if the comments regarding the Consent Decree disclose
14 facts or considerations which indicate that this Consent Decree
15 is inappropriate, improper, or inadequate. McAuley consents to
16 the entry of this Consent Decree without further notice.

17 35. If for any reason this Court should decline to approve
18 this Consent Decree in the form presented, this agreement is
19 voidable at the sole discretion of any party and the terms of the
20 agreement may not be used as evidence in any litigation between
21 the Parties.
22

23 **XVI. EFFECTIVE DATE**

24 36. The effective date of this Consent Decree shall be the
25 date upon which it is entered by the Court.
26
27
28

1 XVII. MODIFICATION

2 37. There shall be no modification of this Consent Decree
3 without written approval of all Parties to this Decree and
4 approval by the Court; provided, however, that the Parties may
5 agree to, and Court approval shall not be required for, non-
6 material modifications made with the written consent of all
7 Parties to this Decree.

8
9 XVIII. SIGNATORIES/SERVICE

10 38. Each undersigned representative of McAuley, the
11 Assistant Attorney General for the Environment and Natural
12 Resources Division of the United States Department of Justice,
13 and the Deputy Director of the Site Mitigation Program,
14 Department of Toxic Substances Control, California Environmental
15 Protection Agency, certifies that he or she is fully authorized
16 to enter into the terms and conditions of this Consent Decree and
17 to execute and legally bind such party to this document.

18 39. McAuley hereby agrees not to oppose entry of this
19 Consent Decree by this Court or to challenge any provision of
20 this Consent Decree, unless the United States has notified
21 McAuley in writing that the United States no longer supports
22 entry of the Consent Decree.

23 40. McAuley shall identify, on the attached signature page,
24 the name and address of an agent who is authorized to accept
25 service of process by mail on its behalf with respect to all
26 matters arising under or relating to this Consent Decree.
27 McAuley hereby agrees to accept service in that manner and to

1 waive the formal service requirements set forth in Rule 4 of the
2 Federal Rules of Civil Procedure and any applicable local rules
3 of this Court, including but not limited to, service of a
4 summons.

5 SO ORDERED THIS 13 DAY OF January, ¹⁹⁸⁷~~1993~~.

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7 Robert J. Kelleher
8 Robert J. Kelleher
9 United States District Judge
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States of America, et al. v. Shell Oil Co., et
3 al., No. Cv-91-0589 RJK(Ex), relating to the McColl Superfund
4 Site.

5 FOR THE UNITED STATES OF AMERICA

6 Date: 9/22/96

7 
8 LOIS J. SCHIFFER

9 Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

14 KURT ZIMMERMAN

15 Assistant United States Attorney
16 Room 7516, Federal Building
17 300 North Los Angeles Street
18 Los Angeles, California 90012

19 
20 WILLIAM A. WEINISCHKE

21 Trial Attorney
22 Environmental Enforcement Section
23 Environment and Natural Resources
24 Division
25 U.S. Department of Justice
26 P.O. Box 7611
27 Ben Franklin Station
28 Washington, D.C. 20044

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JOHN C. WISE
Deputy Regional Administrator
Region IX
U.S. Environmental Protection
Agency
75 Hawthorne Street
San Francisco, California 94105



JO ANN ASAMI
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States of America, et al. v. Shell Oil Co., et
3 al., No. Cv-91-0589 RJK(Ex), relating to the McColl Superfund
4 Site.

7 Date: 8/15/96

FOR THE STATE OF CALIFORNIA,
EX REL., CALIFORNIA DEPARTMENT OF
HEALTH SERVICES, HAZARDOUS SUBSTANCE
ACCOUNT, AND HAZARDOUS SUBSTANCE CLEANUP
FUND

Paul Blais
PAUL BLAIS
Deputy Director
Site Mitigation Program
Department of Toxic Substances Control
California Environmental Protection
Agency
400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

Steve Koyasako
STEVE KOYASAKO
Assistant Chief Counsel
Office of Legal Counsel
Department of Toxic Substances Control
400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

DANIEL E. LUNGREN
Attorney General
RODERICK WALSTON
Chief Assistant Attorney General
THEODORA BERGER
Assistant Attorney General

Timothy R. Patterson
TIMOTHY R. PATTERSON
Deputy Attorney General
California Department of Justice
110 West A Street, Suite 1100
P.O. Box 85266
San Diego, California 92186-5266

1 THE UNDERSIGNED PARTY enter into this Consent Decree in the
2 matter of United States of America, et al. v. Shell Oil Co., et
3 al., No. Cv-91-0589 RJK(Ex), relating to the McColl Superfund
4 Site.

5 FOR DEFENDANT MCAULEY LCX CORPORATION

6 Date:

7-12-96


Charles S. McAuley, President

7
8 Agent Authorized to Accept Service on Behalf of Above-signed
9 Party:

10 Charles S. McAuley
11 President
12 MCAULEY LCX CORPORATION
13 8888 Los Coyotes Drive
14 Buena Park, California 90621
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Exhibit A to the First Amended Consent
Decree

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
et al.,)	
Plaintiffs,)	CASE NO.
v.)	CV 91-0589 RJK(Ex)
SHELL OIL COMPANY, et al.,)	
Defendants.)	DECLARATION OF
)	CHARLES S. MCAULEY
)	IN SUPPORT OF CONSENT
)	DECREE AMONG PLAINTIFFS
)	AND DEFENDANT
)	MCAULEY LCX CORPORATION
AND RELATED CLAIMS)	
)	
)	

I, Charles S. McAuley, pursuant to 28 U.S.C. Section 1746,
declare and state the following:

1. I am Charles S. McAuley, President, Chairman of the
Board and a shareholder of McAuley LCX Corporation, a defendant
in the above-captioned and numbered case. I am fully authorized
to submit this declaration on behalf of McAuley LCX Corporation.

2. I understand that on September 28, 1993, the District
Court in the above-captioned and numbered case rendered judgment
against, among others, McAuley LCX Corporation. I understand
that, among other findings, the Court found McAuley LCX
Corporation liable pursuant to 42 U.S.C Section 9607(a)(1) for
response costs incurred and to be incurred by Plaintiffs the
United States and State of California (the "Governments") in
connection with the McColl Superfund Site. I further understand
that, following the September 28, 1993 judgment, the Governments

1 filed a motion for summary judgment to recover \$25.7 million in
2 past costs from the defendants including McAuley LCX Corporation.

3 3. I hereby state that McAuley LCX Corporation is not able
4 to pay or otherwise fully satisfy the cost claims pending against
5 it.

6 4. I acknowledge that the Governments have requested
7 evidence of the financial condition of McAuley LCX Corporation.
8 McAuley LCX Corporation has provided through its counsel and
9 accountants all necessary and relevant information to the
10 Governments concerning McAuley LCX Corporation's ability to pay
11 the Governments.

12 5. I understand that the Governments and McAuley LCX
13 Corporation have agreed to certain terms of settlement, including
14 the amount of money to be paid by McAuley LCX Corporation to the
15 Governments. I further understand that the Governments'
16 agreement to the terms of settlement is expressly conditioned on
17 the accuracy, truthfulness and completeness of the information
18 provided to the Governments by McAuley LCX Corporation through
19 its counsel and accountants, regarding McAuley LCX Corporation's
20 financial condition.

21 6. The information provided to the Governments regarding
22 McAuley LCX Corporation's financial condition is accurate,
23 truthful and complete.

24 7. Except for the information already provided to the
25 Governments, I am not aware of any plans, negotiations or
26 agreements for:

1 (a) the sale of all or substantially all of the business and
2 assets of McAuley LCX Corporation;

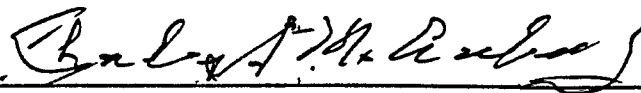
3 (b) the development of all or a substantial portion of the
4 Los Coyotes Country Club for a purpose other than use as a golf
5 course; or

6 (c) the exploration and removal of any minerals from the Los
7 Coyotes Country Club real property.

8 8. I acknowledge that, in the event McAuley LCX Corporation
9 or its representatives or agents have provided information
10 relative to the financial condition of McAuley LCX Corporation
11 that is false in any material respect or have failed to provide
12 all necessary and relevant information to the Governments
13 concerning McAuley LCX Corporation's ability to pay the
14 Governments, the Governments' covenant not to sue in the Consent
15 Decree shall be nullified and the Governments shall be free to
16 pursue their claims against McAuley LCX Corporation, including
17 those set forth in the complaint in the above-captioned matter,
18 and that the Governments may pursue all remedies available to
19 them under law.

20 I do affirm under penalties of perjury and upon personal
21 knowledge that the contents of the foregoing are true.

22
23 Executed this 7th day of June, 1995, at Buena
24 Park, California.

25 
26 CHARLES S. MCAULEY
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
et al.,
Plaintiffs,
v.
SHELL OIL COMPANY, et al.,
Defendants.

CASE NO.
CV 91-0589 RJK(Ex)

DECLARATION OF
CHARLES S. MCAULEY IN
SUPPORT OF CONSENT
DECREE AMONG PLAINTIFFS
AND DEFENDANT
MCAULEY LCX CORPORATION

AND RELATED CLAIMS

I, Charles S. McAuley, pursuant to 28 U.S.C. Section 1746,
declare and state the following:

1. I am Charles S. McAuley, President, Chairman of the
Board and a shareholder of McAuley LCX Corporation, a defendant
in the above-captioned and numbered case. I am fully authorized
to submit this declaration on behalf of McAuley LCX Corporation.

2. The financial condition of McAuley LCX Corporation
remains in all material respects the same as it was when I
executed the Declaration on June 7, 1995 and which is Exhibit A
to the proposed First Amended Consent Decree.

3. I acknowledge that, in the event McAuley LCX
Corporation or its representatives or agents have provided
information relative to the financial condition of McAuley LCX
Corporation that is false in any material respect or have failed

1 to provide all necessary and relevant information to the
2 Governments concerning McAuley LCX Corporation's ability to pay
3 the Governments, the Governments' covenant not to sue in the
4 First Amended Consent Decree shall be nullified and the
5 Governments shall be free to pursue their claims against McAuley
6 LCX Corporation, including those set forth in the complaint in
7 the above-captioned matter, and that the Governments may pursue
8 all remedies available to them under law.

9 I do affirm under penalties of perjury and upon personal
10 knowledge that the contents of the foregoing are true.

11 Executed this 18 day of June, 1996, at Buena Park,
12 California.

13 
14 CHARLES S. MCAULEY
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EXHIBIT C TO THE
FIRST AMENDED CONSENT DECREE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

v.

SHELL OIL COMPANY, et al.,

Defendants.

AND RELATED CLAIMS

CASE NO.

CV 91-0589 RJK(Ex)

DECLARATION OF
CHARLES S. MCAULEY IN
SUPPORT OF CONSENT
DECREE AMONG PLAINTIFFS
AND DEFENDANT
MCAULEY LCX CORPORATION
RE: POTENTIAL
ACQUISITION OF RAMPARTS
PROPERTY

I, Charles S. McAuley, pursuant to 28 U.S.C. Section 1746,
declare and state the following:

1. I am Charles S. McAuley, President, Chairman of the
Board and a shareholder of McAuley LCX Corporation, a defendant
in the above-captioned and numbered case. I am fully authorized
to submit this declaration on behalf of McAuley LCX Corporation.

2. I hereby state that in the event McAuley LCX
Corporation acquires ownership of that portion of the McColl
Superfund Site described in Section X. of the Consent Decree as
"Property II" (also known as the "Ramparts Property"), more fully
described in Exhibit E to the Consent Decree among plaintiffs and
defendant McAuley LCX Corporation (filed concurrently herewith in
the above-captioned and numbered case), McAuley LCX Corporation
will pay no more than a nominal amount for the purchase of

1 Property II, not to exceed \$5,000.00.

2 3. In the event that Property II is purchased for an
3 amount in excess of a nominal amount, the entire amount of such
4 excess will be paid by one or more of the following oil company
5 defendants in the above-captioned and numbered case: Shell Oil
6 Company, Union Oil Company of California, Atlantic Richfield
7 Company and/or Texaco, Inc. ("Oil Company Defendants").

8 4. In the event that Property II is developed into a
9 condition suitable for use as a golf course, the entire amount of
10 the cost of such development will be paid by one or more of the
11 Oil Company Defendants.

12 5. Nothing in this declaration is intended to obligate
13 McAuley LCX Corporation to acquire or develop Property II, or to
14 imply that the Oil Company Defendants have agreed to pay for the
15 acquisition or development of Property II, as described herein.

16 I do affirm under penalties of perjury and upon personal
17 knowledge that the contents of the foregoing are true.

18 Executed this 27 day of June, 1996, at Buena Park,
19 California.


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21 CHARLES S. MCAULEY
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EXHIBIT D TO THE FIRST
AMENDED CONSENT DECREE

LEGAL DESCRIPTION

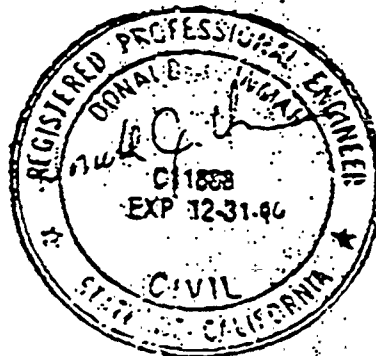
In the City of Fullerton, County of Orange, State of California. A portion of Parcel 3 of a Parcel Map recorded in Book 48, Pages 49 & 50 of Parcel Maps, records of Orange County, described as follows:

Beginning at the northwest corner of said Parcel 3; thence N 89° 38' 10" E a distance of 484.31 feet to the northeast corner of said Parcel 3; thence S 0° 29' 52" E along the east line of said Parcel 3 a distance of 1123.46 feet; thence S 86° 55' 09" W a distance of 711.88 feet to an angle point; thence N 3° 04' 29" W a distance of 222.33 feet to a point on the northwesterly line of said Parcel 3; thence N 57° 12' 46" E along said northwesterly line a distance of 20.30 feet; thence N 29° 02' 15" E along said northwesterly line a distance of 485.00 feet; thence N 2° 42' 46" W along the westerly line of said Parcel 3 a distance of 502.13 feet to the point of beginning.

Total Area: 14.689 Acres

Prepared By:

Donald J. Inman & Associates
5131 Fox Hills Avenue
Buena Park, CA 90621-1408
(714) 521-0554



All that portion of the Southwest quarter of Section 19, Township 3 South, Range 10 West, in the City of Fullerton, County of Orange, State of California, as said Section is shown on the map of Tract No. 64, recorded in book 10, page 14, Miscellaneous Maps, records of said Orange County, described as follows:

That portion of the Southwest quarter of Section 19, Township 3 South, Range 10 West, in Tract No. 64, in the City of Fullerton, as per map recorded in book 10, page 14, Miscellaneous Maps, records of said Orange County, and as shown on maps of Survey recorded in book 13, page 38, book 14, page 27, and in book 66, page 17, Record of Surveys, in the office of the County Recorder of Orange County, described as follows:

Beginning at the Northwest corner of the East 231.069 acre parcel of land shown on a map filed in book 5, page 23, Record of Surveys, in the office of the County Recorder of said Orange County; thence North 89° 32' 30" East 59.43 feet along the North line of said land to a 6" X 6" Post; thence North 89° 43' 10" East 521.00 feet along said North line to the Northeast corner of the land described as Parcel 3 in the deed to Eli S. McColl recorded November 25, 1949 in book 1931, page 118, Official Records; thence South 12° 16' 50" East 410.97 feet to the most Easterly corner of said Parcel 3; thence South 62° 51' 00" West to the most Southerly corner of the land described as Parcel 2 in said deed; thence North 0° 29' 10" West to the point of beginning.

EXCEPTING THEREFROM an undivided 4/5ths interest in all gas, oil, minerals and hydrocarbons of every kind, in and under said land as conveyed to Joseph Emery Grant, Frank Emery Grant, Michael Emery Grant and Peter Grant, by deed recorded August 10, 1949 in book 1887, page 540, Official Records.

By Deed recorded July 18, 1978, in Book 12761, page 559, Official Records, all rights to enter the top 500 feet of said land were granted to the then record owner of said land.

ALSO EXCEPTING THEREFROM an undivided 1/5th interest in all gas, oil, minerals and hydrocarbons of every kind, in and under said land, as reserved in the deed from Helen E. Grant recorded November 25, 1949 in book 1931, page 118, Official Records.

By deed recorded July 18, 1978, in Book 12761, page 559, all rights to enter the top 500 feet of said land were granted to the then record owner of said land.

Attention is directed to the fact that the oil, etc., is excepted from the description in this guarantee and any policy issued in the name of a purchaser at a sale under said Deed of Trust will also contain said oil-exception.

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